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IN THE

Supreme Court of the United States

October Term, 1957

No. 284

GEORGE J. SCHAEFER,

Petitioner,

vs.

MILTON L. GUNZBURG, et al.,

Respondents.

PETITIONER'S REPLY BRIEF.

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Prefatory Statement.

Respondents' defense in their Brief of the judgment of the Court of Appeals appears to rest exclusively upon the repetitive recitation of truisms and legal axioms, whose abstract correctness is beyond dispute but whose concrete application to the facts of the case at bar shows only that they are wholly inapplicable. Thus, respondents vigorously assert that a jury trial is not now a matter of right in a case which was not triable by a jury at common law; and with this assertion we of course agree, but we search Respondents' Brief in vain for any demonstration that this case would not have been so triable at common law. Similarly, respondents assert that a jury trial of

legal claims is not required when such legal claims are only "incidental" to the equitable relief sought; and again we agree but, as we have demonstrated in our Petition and as respondents have utterly failed to show the converse, petitioner's legal claims herein are not "incidental" to his equitable claims, but are wholly independent thereof and could properly have been maintained even though equity jurisdiction had never been invoked.

It must be assumed that the case for affirmance of the judgment below has been made in its strongest posture in the opinion of the Court of Appeals and in the Brief for Respondents. We believe that, as made by the Court of Appeals, the insufficiency of that case has been demonstrated in our Petition. That, as made by respondents in their Brief, that case is still insufficient, we shall seek to demonstrate by this Reply.

ARGUMENT.

I.

The Complaint Herein Stated Legal Claims for Damages and Lost Profits Occasioned by the Defendants' Repudiation of the Partnership and Conversion of Its Assets. Upon Those Claims, Petitioner Had the Right to Trial by Jury, and That Right Was Not Lost by the Concurrent Assertion of Claims for Dissolution of the Partnership and Distribution of Its Assets.

One more truism asserted by respondents may be noted and our concurrence therein acknowledged: Whether the parties to an action are entitled to a jury trial must be determined from the case made by the allegations of the Complaint.[1] (Resp. Br., pp. 10, 14; see also, Pet., pp. 30, 33.)

So viewed, the Complaint alleged the formation of a partnership between Gunzburg and petitioner, the repudiation of the partnership and the denial of its existence by Gunzburg and the conversion of its assets and profits by Gunzburg *and the other respondents, each* were

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[1] While stating and purporting to rely most strongly upon their statement that the allegations of the Complaint alone are determinative of the question here presented, respondents have summarized at considerable length their version of the conflicting and contradictory evidence adduced at the trial most favorably to them, and of the trial court's assessment of petitioner's credibility thereon. (Resp. Br. pp. 5-7.) For what purpose? They do not contend that the evidence adduced by petitioner was insufficient to support his claims; or that a jury could not have determined that the petitioner was telling the truth. That being so, and petitioner being entitled to his timely demanded jury trial, the proceedings at the trial are of no moment here, either to alter the character of the action or to insulate the error below from reversal. (Pet. pp. 33-37.)

not members of the partnership but who appropriated its assets with knowledge of petitioner's rights and in violation thereof. For these acts, petitioner sought money damages for the wrongful dissolution, an award of his rightful share of the partnership profits converted by respondents (to the determination whereof an accounting was prayed), and a declaration of his rights as a partner. [R. 8-11, 25-34, 37-39; Pet., pp. 5-7, 13-14.] In all of the foregoing aspects, petitioner's claim was and is cognizable at common law and a jury trial thereon was and is a matter of right. (*Cases cited*, Pet., pp. 12-20.)

Respondents do not question the fact that allegations of the type hereinabove summarized state a claim to relief cognizable at law; nor do they seriously contend that the Complaint contains no such allegations, since examination of the Complaint clearly reveals the presence of all of them. Respondents assert, however, that the demand for jury trial was properly denied because: petitioner did not specifically allege that he was damaged, by the acts complained of, in the amount for which he prayed; or because he didn't ask for an award of partnership profits in a sum certain, but prayed instead for an award of such amount as should be found due upon an accounting; or because petitioner also sought relief of an equitable nature, as to which his legal claims were, respondents blandly assert, only "incidental."[2] None of these conten-

[2] In assessing the "incidental" nature of petitioner's legal claims, it should be noted that the sustention of these claims would have resulted in an award to him of damages in the amount of $3,500,000.00, and of a share in profits amounting to 50% of between $6,000,000.00 and $8,000,000.00; whereas the granting of equitable relief would have afforded to him only a dissolution of an inoperative partnership business and a distributive share of partnership assets consisting primarily of obsolete and discarded equipment.

tions afford logical basis for the denial of petitioner's constitutional right to a jury trial.

First. The argument that petitioner did not state a legal claim to relief because he failed to allege that the acts complained of had damaged him in the amount prayed (Resp. Br., pp. 9-10) was adopted by the Court of Appeals as a major support for its judgment herein. [R. 1827.] In response to that argument as voiced by the Court of Appeals, we pointed out that such a formalistic allegation is not a part of a cause of action at law for damages; and that, under the law of California (by which this case is governed, jurisdiction being founded upon diversity of citizenship), such a cause of action is stated by the allegation of wrongful acts by defendant in violation of plaintiff's rights, followed by a prayer for damages in a specific amount. It is not necessary to add a specific allegation that the acts alleged caused the damage for which recovery is sought. (*Cases cited*, Pet., pp. 16-17.)

Respondents have not sought to answer or to weaken the cogency of this demonstration of the non-essentiality of such an allegation; but have simply pointed to its absence, without enlightening the Court or us as to the ground upon which it is claimed that such absence deprives the claim of its legal character. (Resp. Br., pp. 9-10.)

In point of fact, the Complaint specifically pleaded the rights of petitioner arising out of the partnership agreement; and their violation by respondents, repudiation thereof and conversion of the profits to which petitioner is entitled. It prayed for damages for the wrongful acts alleged. These facts support a cause of action for damages by the wronged partner, as to which the claim is legal in nature. (*Calif. Corps Code* §15038 (2) (a);

Zimmerman v. Harding, 227 U. S. 489, 494-495; *Laughlin v. Haberfelde*, 72 Cal. App. 2d 780, 789, 165 P. 2d 544.)

The allegation of petitioner's rights and their violation by the wrongful acts of respondents, followed by a prayer for damages in a specified amount, is sufficient without more to state a cause of action at law for damages. (*American Fire & Cas. Co. v. Finn*, 341 U. S. 6, 13.)

Nor is any added significance to be derived from the fact that, *as to the equitable relief concurrently sought by him*, petitioner alleged the inadequacy of his remedy at law. (*Cf.* Resp. Br., p. 10.) The presence of such an allegation does not convert the *entire action* into an equitable one or alter the character of independent claims assertable at law; nor does it have any effect upon petitioner's right to a jury trial upon those legal claims. As stated in respect of just such contention as here made by respondents, by the District Court for the Southern District of New York: "Defendants attach special significance to paragraphs 49 and 50 of the complaint, which allege . . . *that plaintiffs have no adequate remedy at law* . . . . In determining the nature of the action, however, no more importance can be attached to these paragraphs than to the paragraph which precedes them, in which plaintiffs state a claim for money damages." (*Ralph Blechman, Inc. v. Kleinert Rubber Co.*, S. D. N. Y., 98 Fed. Supp. 1005, 1006. Emphasis added.)

Second. Much of respondents' argument herein, as well as the entire opinion of the Court of Appeals, appears to be based upon the erroneous assumption that only where the prayer for relief seeks a money judgment in a sum specified and certain is the claim asserted therefor one which is cognizable at law. [See, *e. g.*, R. 1828, 1830;

Resp. Br., p. 11.] It is accordingly argued here by respondents that, because petitioner sought an award of his rightful share of partnership profits to be determined with accuracy by an accounting of partnership operations, rather than asking for such share in a specified number of dollars, his claim is equitable in nature; even though the claim to an accounting rests upon affirmative allegations of the repudiation of the partnership and the conversion of its profits by Gunzburg and the non-partner respondents. In plain language, respondents argue that, because petitioner prayed for an accounting, his action is of necessity an equitable one regardless of the nature of his claims. (Resp. Br., pp. 12-13, 15.)

That assertion, unsupported by the citation of pertinent authority, is simply not the law.

A plaintiff in an action *at law*, wherein the recovery he seeks may be determined only after an accounting of the transactions upon which that recovery is sought is entitled to pray for and to secure such an accounting in his action at law; and the action is not thereby made an action in equity.

The principle is settled beyond doubt or dispute that a partner who has been deprived of his rightful share of partnership profits by the tortious acts of his co-partner may maintain *an action at law* to recover the amount of the profits of which he was thus deprived. (*Zimmerman v. Harding*, 227 U. S. 489, 494-495; *Laughlin v. Haberfelde*, 72 Cal. App. 2d 780, 788-789, 165 P. 2d 544; *Johnstone v. Morris*, 210 Cal. 580, 292 Pac. 970.) This Court has so stated in terms which are susceptible of no other construction:

> ". . . if one member assumes to dissolve a partnership before the end of the term, the other may bring an action for the breach, and recover not only his

> interest, but *also his share of the profits which might have been made during the term.* He need not wait until the expiration of the period, and need not go into equity for an accounting, but *may at law show the probable profits which he has been deprived of.*" (Emphasis added.)
>
> *Zimmerman v. Harding, supra.*

In applying these principles to a case whose facts were essentially the same as those here presented, where plaintiff had been deprived of his interest in a partnership by the defendants' repudiation thereof and exclusion of plaintiff therefrom, the California court held that plaintiff was entitled to recover, *in an action at law*, his rightful share of the profits derived by the defendants, on the ground that those profits were properly the profits of the partnership to which plaintiff was entitled. (*Laughlin v. Haberfelde, supra*, 72 Cal. App. 2d at 788-789.)

Respondents seek desperately but unavailingly to distinguish the *Laughlin* case upon their contention that there "plaintiff did not sue for *partnership* profits, as petitioner asserts; instead, the plaintiff sued for profits that he would have made had a certain contract been performed." (Resp. Br., pp. 12-13.) The true merit of this "distinction" can best be assessed in the light of the fact that the "certain contract" there involved, whose performance would have resulted in profit to plaintiff, *was a contract by which plaintiff and defendants formed a partnership;* and the plaintiff was held entitled to recover the "profits" he sought in an action at law on the ground that *those profits belonged to the partnership* of which he was a member, *and hence were partnership profits!*

Nor, in order to recover the share of partnership profits to which he was entitled in an action at law, was

petitioner required to demand a sum certain and specified. In a case in which he properly seeks recovery in an amount which must be determined by an accounting of financial transactions, he may pray for such an accounting to determine the amount which is due to him. Where, as here, the cause of action asserted by him is legal in nature, it is not transformed into an equitable claim by reason of the fact that such a full accounting is required and sought in order to determine the amount of the judgment to which he is entitled. The action is still one at law, and a full accounting of profits may properly be sought and ordered in such an action at law. (*Cases cited*, Pet., pp. 19-20; see also, *Bishop v. Kelley*, 100 Cal. App. 2d 775, 783, 224 P. 2d 814; *Ex parte Peterson*, 253 U. S. 300, 306-308; *Bercovici v. Chaplin*, S. D. N. Y., 3 F. R. D. 409, 410.)

Where, as here, a plaintiff sues his co-partner for profits of which he has been deprived by the latter's conversion thereof, the cause of action is legal in character; and the plaintiff is entitled to a jury trial thereon notwithstanding that he prays for, and that the determination of the amount to which he is entitled requires, an accounting of and for partnership profits. (*Johnstone v. Morris*, 210 Cal. 580, 586, 292 Pac. 970.)

Third. But, respondents finally assert (Resp. Br., p. 10) and the Court of Appeals appears to have intimated [R. 1829], petitioner was not entitled to a jury trial upon his claims for damages, lost profits and declaration of rights because these claims were only "incidental" to claims in equity for decree of dissolution and appointment of a receiver.

To support their characterization of these legal claims as "incidental" only, respondents offer only their own *ipse dixit* to that effect. But that respondents say the claims are "incidental" does not make them so.

To be sure, a plaintiff is not entitled to a jury trial of a cause merely because the ultimate judgment in a purely equitable action may involve the payment of money as an incident to a decree in equity. (*N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 48.) But this unquestioned principle has application only to the situation wherein the claim to relief is *entirely* equitable in nature, no independent legal claim for money being maintained *or maintainable*; and where the award of money is made only in essential supplementation of complete equitable relief in *an equity case*. (*N. L. R. B. v. Jones & Laughlin Steel Corp., supra; Pease v. Rathbun-Jones Engineering Co.*, 243 U. S. 273, 278-279; *Clark v. Wooster*, 119 U. S. 322, 323.)

Strikingly illustrative of this principle are the facts of the three decisions of this Court above cited. In the *Jones & Laughlin* case, the jurisdiction of the Labor Relations Board there involved was the purely equitable jurisdiction created by the Wagner Act; and the proceeding there in issue was solely one to enjoin the maintenance and continuance of unfair labor practices by the respondent. Such a proceeding was not recognized and could not be maintained at common law; and the only jurisdiction there invoked was the equitable jurisdiction created by statute. (See, *Bruckman v. Holtzer*, 9 Cir., 152 F. 2d 730, 731.) The "damages" awarded in that case were not in the nature of a common law judgment for damages, but took the form of a Board order to pay back wages to employees improperly discharged for union activity—in the nature of a decree in equity for restitution. (See, *United States v. Friedland*, D. C. Conn., 94 Fed. Supp. 721, 723.) In that posture of the facts, it was held that the award of money was incidental to the equitable relief awarded.

In *Pease v. Rathbun-Jones*, the action there involved had been *solely* one for injunctive relief, the jurisdiction of the District Court being wholly equitable. The judgment involved there was a summary judgment in the injunction action, entered against a surety upon the injunction bond, resulting from a determination that the preliminary injunction had been wrongfully issued. It was held that an award of relief upon an injunction bond was simply incidental to the general equity jurisdiction in the injunction action. And, in *Clark v. Wooster*, the only claim there asserted was in equity to enjoin infringement of a patent. In the exercise of its equitable jurisdiction, the court determined that an injunction could not issue because the infringed patent had expired; and it awarded damages in lieu thereof.[3]

The controlling consideration in each of the aforementioned cases was the fact that the only claim to relief asserted therein was one recognized only in equity; and that, if the equity jurisdiction of the court had not been invoked, a legal claim for damages could not have been maintained. In each of these cases, the money award complained of was held to be simply a proper part of an equity decree, and not a judgment upon an independently existing cause of action at law.

The converse proposition is equally true and is here applicable with far greater pertinence. If the claim for legal relief is one which exists at law and is not dependent

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[3] Had plaintiff in the *Clark* case sought money damages in *addition to*, or alternatively with her suit for an injunction, it is beyond question that that claim would have been legal in character and would not have been "incidental" to her equity claim for jury trial purposes. *Cleiner v. Woods*, 8 Cir., 196 F. 2d 828, 833; *Ralph Blechman, Inc. v. Kleinert Rubber Co.*, S. D. N. Y., 98 Fed. Supp. 1005, 1006.

upon the establishment of rights to relief cognizable only in equity, the claim to legal relief is independent; and it is not "incidental" to the equitable relief which may be concurrently sought, notwithstanding the joinder of both claims in the same action. (*Porter v. Warner Holding Co.*, 328 U. S. 395, 402; *United States v. Nasif*, W. D. La., 103 Fed. Supp. 401, 403-404; *United States v. Friedland*, D. C. Conn., 94 Fed. Supp. 721, 723; *United States v. Jepson*, D. C. N. J., 90 Fed. Supp. 983, 985.)

The test, then, is simply whether the claim to legal relief is capable of standing alone and independently, or whether it can only be maintained because of and dependent upon the assertion of a claim to equitable relief. If the former, then it is not "incidental," and the parties are entitled to a jury trial thereon as a matter of right; and their entitlement thereto is in no wise altered by weighing equitable claims against legal claims, as respondents have done, to determine which are the more numerous or which plaintiff may want more. ". . . the prayer for equitable relief is no more controlling than the prayer for money damages in determining the essential nature of the complaint." (*Ralph Blechman, Inc. v. Kleinert Rubber Co.*, S. D. N. Y., 98 Fed. Supp. 1005, 1006.)

We may, then, dispense with the profitless and academic argument made by respondents and, apparently, seconded by the Court of Appeals [R. 1829], that petitioner's Complaint "sounds more equitable than legal." The legal claims pleaded by petitioner are self-sufficient and could be maintained even if no relief of an equitable nature were sought. Thus, had petitioner pleaded only the formation of the partnership and respondents' repudiation of its existence and conversion of its assets and profits, and had he prayed only for an award of damages and of the profits

of which he was thus deprived, his Complaint would have stated a claim to relief that is wholly legal in character. The character of that claim would not be changed merely by the addition of coordinate claims to equitable relief. (Pet., pp. 11-20.)

Where, as here, a legal claim to relief may be maintained regardless of whether equitable relief is sought or equity jurisdiction invoked, it is not transferred into an adjunct of or "incident" to an action in equity simply because in addition to pleading such a legal claim, the plaintiff has also pleaded facts entitling him to concurrent and coordinate relief of an equitable nature.

II.

The Complaint Contains Separate and Coordinate Claims to Legal Relief and to Equitable Relief. Upon That Inescapable Fact, Petitioner Was Entitled to a Jury Trial of the Legal Claims as a Matter of Right.

Once the confusion engendered by respondents' unsupported arguments is cleared away, this case assumes a very clear and very simple perspective. Admittedly, petitioner had and stated a claim to relief cognizable at common law—a claim based upon the repudiation of the partnership and the conversion of its assets. Admittedly also, petitioner had and pleaded as well a claim to relief cognizable only in equity. These claims may properly be joined in the same action. (*Zimmerman v. Harding*, 227 U. S. 489; Pet., pp. 20-24.) Such a joinder nonetheless preserves petitioner's right to a jury trial upon the legal issues, under Rules 38 and 39 of the Federal Rules. (*Cases cited*, Pet., pp. 24-28.)

The case at bar is just that simple.

There would be no question about the result here had petitioner cast the form of his Complaint so that it was divided into two separately numbered and separately stated claims to relief—the first claim alleging the formation of the partnership, the repudiation of its existence, and the conversion of its assets; and the second, including appropriate allegations incorporated by reference from the first claim, alleging the formation and existence of the partnership, the acts of Gunzburg creating grounds for dissolution, and the necessity of a decree of dissolution. Had petitioner so segregated his claims,[4] the pleading of coordinate legal and equitable claims would have appeared beyond dispute; and petitioner's entitlement to a jury trial would be unmistakable.

The only escape from that conclusion in the case at bar would be to say that a different result must obtain here because petitioner did not segregate his claims, but pleaded both legal and equitable claims in a single count of his Complaint. But such an argument is wholly without substance. If a plaintiff has both legal and equitable claims when stated separately, they are still both legal and equitable when they are stated in a single count of his complaint, and he is still entitled to a jury trial upon the legal claims.

> ". . . obviously, it is without difference in this respect whether all the underlying rights involved . . . are made the subject of a single statement of claims in

[4] Petitioner was, of course, not required to segregate his claims in the absence of a motion to compel separate statement thereof; and respondents made no such motion here.

the complaint or of distinct counts. This is a mere form, which is without effect upon substance." (*Leimer v. Woods*, 8 Cir., 196 F. 2d 828, 833; *Cases cited*, Pet. p. 27.)

Nor is the error below to be defended upon the theory that it was simply an exercise of the trial court's discretion to try the equitable issues "first." (Resp. Br., pp. 9, 16.) The contention that such was the basis of the ruling in question here will probably come as a distinct surprise to the trial court; since it is quite apparent that its order was not a direction to try equitable issues *first* and legal issues thereafter, but was rather an order denying a jury trial for the reason that *only* equitable issues were presented. Moreover, it is established beyond serious question that, to preserve the right of jury trial inviolate as required by Rule 38 (a), the trial court must *first try the legal issues to a jury* and concurrently or subsequently determine the equitable issues, in the absence of very unusual circumstances—not here claimed to exist—requiring trial in reverse order. (*Leimer v. Woods*, 8 Cir., 196 F. 2d 828, 834; *Bruckman v. Hollzer*, 9 Cir., 152 F. 2d 730, 732-733.)

The foregoing principles and their necessary application to the facts of the case at bar have been recognized and given effect in the decisions of each of the Courts of Appeal cited by us as resulting in the conflict of decision among the circuits. These principles have been effectively repudiated by the Court of Appeals in the case at bar.

III.

Plaintiff's Amended Complaint Stated No Claims or Facts Different From Those Stated in His Original Complaint as to Which a Jury Trial Was Denied. His Failure to Reassert a Previously Refused Jury Demand Could Not, Therefore, Constitute a Waiver of His Right Thereto.

Reluctantly recognizing that the original Complaint (which they have repeatedly stated must control) sustained petitioner's demand for a jury trial, respondents belatedly contend that the error in denying that demand was cured by petitioner's failure to renew his demand upon the filing of his *amended* complaint. Such failure, it is contended, amounts to a waiver of the right. (Resp. Br., p. 18.)

That was not the basis of the decision of the Court of Appeals. Quite to the contrary, the Court of Appeals specifically held that it *did not* believe that petitioner had waived his right to jury trial. [R. 1832.] This Court, of course, will not sustain its affirmance of a Court of Appeals upon a ground which was not the basis of decision below. (*United States v. Fleischman*, 339 U. S. 349, 365; *Owens v. Union Pacific R. Co.*, 319 U. S. 715, 725.)

Moreover, petitioner was not entitled or required to renew his jury demand upon the filing of his amended complaint. As the record shows [R. 58], the amended complaint merely abbreviated, but did not alter or modify the allegations of the original Complaint; and it merely restated, but did not change, the issues raised by the original Complaint, as to which a jury trial had been denied.

The Court of Appeals expressly recognized that the amendment did not alter the issues or justify the renewal of the jury demand. [R. 1832.]

The rule is established that, if a Complaint does not support a jury trial and the issues are not altered by the filing of an amended complaint, a party is not entitled to renew a previously denied jury trial demand. (*Roth v. Hyer*, 5 Cir., 142 F. 2d 227, 228; *Canister Co. v. Healy*, 3 Cir., 182 F. 2d 510, 513; *Teichroit, Inc., v. Parissi*, N. D. N. Y., 108 Fed. Supp. 897, 898-899.)

In the filing of his original Complaint, petitioner by timely demand informed the District Court of the fact that he desired a jury trial. He underscored that desire by vigorously opposing the motion of respondents to strike that demand. This is not even remotely a case in which the District Court was misled into error by an ambiguous silence.* Upon the issues presented, the District Court ruled that petitioner had no right to a jury trial. Pending reversal on appeal, petitioner was bound to proceed in accordance with that ruling. When he subsequently filed an amended complaint presenting the same issues which the court had previously held did not permit a jury

*The only procedure by which petitioner could seek a jury trial was the one by which he proceeded here. His opposition to respondents' motion to strike could hardly have been construed by the District Court as "acquiescence" in the denial of a jury trial. Petitioner's failure to reassert his demand (particularly when no occasion permitting its reassertion ever arose) should have misled no one. In these circumstances, the case at bar is clearly distinguishable from *Smith v. Cushman Motor Works*, 178 F. 2d 953, in which case appellant had *never* indicated a desire for a jury trial or an objection to trial by the Court.

trial, petitioner was not required to court the displeasure of the District Court by the futile reassertion of a demand which the court upon the same allegations had previously denied. Petitioner had done all that he could do in order to preserve his constitutional rights. He did not waive them by conduct not even remotely suggestive of such a waiver.

As stated by the California court in respect of the precise point here at issue:

> "Nor did appellants waive their right to a trial by jury by going to trial after it had been denied. Their right having been denied, appellants were clearly within their rights in going to trial and seeking to have the action of the court reversed upon an appeal from the judgment."
>
> *Hertter v. Addis*, 89 Cal. App. 160, 166, 265 Pac. 298.

Conclusion.

The decision of the Court of Appeals represents the only decision in any Circuit in which the denial of a timely demanded jury trial upon clearly pleaded and recognized legal claims has been upheld simply because the pleader had also sought equitable relief in order to secure a complete resolution of the controversy. The tenuous reasons assigned by the Court of Appeals for its ruling are, upon their face, in stark conflict with the decisions of every other Court of Appeals which has considered the question. The necessity for exercise by this Court of its supervisory jurisdiction is emphasized by the fact that a square and irreconcilable conflict among the circuits is here presented

upon a question of interpretation of the Federal Rules of Civil Procedure upon which this Court has not previously passed; and, even more importantly, by the fact that the result of the decision below has been that, upon grounds which are manifestly erroneous, petitioner has been deprived of a constitutional right of fundamental importance to the effective administration of justice. For these reasons, a writ of certiorari should here be granted.

Respectfully submitted,

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